

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Submitted on Briefs, September 28, 2000

**JOHNNY MCGOWAN v. ROBERT GIBSON, et al.**

**Direct Appeal from the Chancery Court for Morgan County**  
**No. 00-12 Hon. Frank V. Williams, III, Chancellor**

**FILED NOVEMBER 17, 2000**

**No. E2000-01385-COA-R3-CV**

---

Plaintiff's Complaint was dismissed by the Trial Court on the basis plaintiff's action was time barred by Tenn. Code Ann. §41-21-806. We vacate and remand.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Vacated.**

HERSCHEL PICKENS FRANKS, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR, J., and D. MICHAEL SWINEY, J., joined.

Johnny McGowan, Petros, Tennessee, *pro se*.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, and Dawn Jordan, Assistant Attorney General, Nashville, Tennessee, for Defendants-Appellees.

**OPINION**

Plaintiff's complaint alleges that defendants, employees of the Tennessee Department of Corrections at Brushy Mountain Prison, assaulted plaintiff, and that plaintiff was charged with disciplinary infractions in retaliation for his filing a grievance regarding the assault. These events took place in June of 1999, and the final grievance decision in defendants' favor, was made on August 2, 1999. The Complaint was filed on January 20, 2000, and defendant's Motion to Dismiss and for Summary Judgment was granted by the Trial Court on the grounds that the Complaint was barred by Tenn. Code Ann. §41-21-806, which states that a claim shall be dismissed if brought after thirty days from the date of the final decision of the grievance commission.

Plaintiff's Complaint seeks to state a claim under 42 U.S.C. §1983 for violations of

plaintiff's civil rights. These actions are governed by the personal injury statute of limitations of the state where the injury occurred, and in this State, the statute gives plaintiff one year within which to file his action. *Wilson v. Garcia*, 471 U.S. 261 (1985); *Berndt v. Tennessee*, 796 F.2d 879 (6<sup>th</sup> Cir. 1986).

In 1996, the Tennessee Legislature enacted Tenn. Code Ann. §41-21-801 *et seq.*, which deals with lawsuits filed by inmates, and imposes certain requirements upon those inmates who seek to file a lawsuit and claim inability to pay costs. The Trial Court, in dismissing the suit, relied upon Tenn. Code Ann. §41-21-806, which reads as follows:

(a) An inmate who files a claim that is subject to review by the grievance committee established by the department shall file with the court an affidavit stating the date that the grievance was filed and the date the final decision was received by the inmate with a copy of the final decision from the grievance committee.

(b) The court **shall dismiss the claim if the inmate fails to file the claim before the thirty-first day after the date the inmate receives the final decision from the grievance committee.**

(c) If a claim is filed before the grievance procedure is complete, the court shall stay the proceeding with respect to the claim for a period not to exceed ninety (90) days to permit completion of the grievance procedure. (Emphasis added).

Defendants argue that since plaintiff did not comply with the statute, his complaint is time-barred. However, plaintiff argues that the correct statute of limitations to be applied to his claim is the one year personal injury statute, and that his claim was filed well within that time frame.

In *Wilson*, the Supreme Court determined that one simple characterization of all §1983 claims would best serve the statute's remedial purpose, and that such characterization was a matter of federal and not state law. The Court further explained that "federal interests in uniformity, certainty, and the minimization of unnecessary litigation" support the conclusion that the appropriate statute of limitations to be applied for §1983 actions would be the general personal injury statute of the state where the claim arose. *Id.* at 279-280. One reason given for adopting this approach was that it minimized "the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by §1983" because the Court considered it "most unlikely that the period of limitations applicable to such claims ever was, or ever would be, fixed in a way that would discriminate against federal claims, or be inconsistent with federal law in any respect." *Id.* at 279.

As a result, courts have refused to apply state statutes which attempt to shorten this limitations period. In *Duffy v. Massachusetts Dept. of Corrections*, 746 F.Supp. 232 (D. Mass. 1990), the Court rejected the defendants' argument that the plaintiff's claim was time-barred because the claim was in the nature of a certiorari action, which had only a sixty-day statute of limitations.

The Court said that while the gravamen of the plaintiff's complaint was analogous to a certiorari action, it was of no consequence because the Supreme Court in *Wilson* had decreed that the state's personal injury statute of limitations would be imposed in §1983 actions. Also, in the case of *Sullivan v. Bailiff*, 867 F. Supp. 992, 995 (D. Wyoming 1994), the Court rejected a Wyoming statute which provided a two-year limitations period for "actions upon a liability created by federal statute, other than a forfeiture or penalty, for which no period of limitations is provided in such statute." This, the Court said, ran afoul of the principle stated in *Wilson*, which would mandate use of Wyoming's four year personal injury statute of limitations. *Id.* The court observed:

It strains common sense to allow individual states to limit the viability of §1983 actions through specific statutes of limitation, the application of which are based solely on §1983's status as a federal statute. By adopting such a position, this Court would invite the very discrimination against constitutional and federal claims that the drafters of the Civil Rights Act of 1871 sought to avoid. When taken to its logical extreme, the defendants' argument would allow individual states to hobble §1983 by making it subject to specialized statutes of limitation of unreasonably short duration.

*Id.* at 995. Accord: *Arnold v. Duchesne County*, 26 F.3d 982 (10<sup>th</sup> Cir. 1994).

Finally, in the case of *Felder v. Casey*, 487 U.S. 131 (1988), the plaintiff filed a §1983 action but failed to comply with a state law requiring plaintiffs who sue governmental entities to give notice of the claim within 120 days of the injury. The state court dismissed the claim due to the failure to comply with the notice requirement, but the United States Supreme Court reversed, finding that the state law was preempted by §1983, and explained that though states generally can enact statutes which govern litigation in their courts, the Supremacy Clause prohibits a state law from frustrating the objectives of a federal law. *Id.* at 138. The Supreme Court held that §1983 is a remedial statute enacted to provide compensation to persons deprived of their civil rights by state actors, and that the state notice requirement undermined a "uniquely federal remedy" because it "conditions the right of recovery that Congress has authorized, and does so for a reason manifestly inconsistent with the purposes of the federal statute: to minimize governmental liability." *Id.* at 141-142. The Court concluded that since those plaintiffs who wished to sue governmental entities had to give notice "within such an abbreviated time period" (where other plaintiffs were given two years), was a discriminatory requirement and detrimental to a federal right. *Id.* at 146.

In this case, the plaintiff would have one year within which to bring his §1983 action, but for the fact that he is a prisoner who had a claim subject to review by a grievance committee. By virtue of this fact, he is limited to filing within 30 days of the resolution of his grievance by Tenn. Code Ann. §41-21-806. This requirement unfairly discriminates against prisoners seeking to file civil rights claims, since claims alleging civil rights violations by state actors would most likely be the very claims that would be subject to review by a grievance committee. The foregoing authorities, make clear that a state cannot impose such a restriction on a federal right, and *Wilson* controls. We conclude that the plaintiff's claim was not time-barred because it was filed within the applicable one year statute of limitations.

Our conclusion is further buttressed by the fact that Congress has enacted 42 U.S.C. §1997e, which provides that an action cannot be brought by a prisoner regarding prison conditions under §1983 until any available administrative remedies are exhausted.<sup>1</sup> 42 U.S.C. §1997e(a)<sup>2</sup>. If a prisoner fails to exhaust his administrative remedies, his complaint will be dismissed. *Brown v. Toombs*, 139 F.3d 1102 (6<sup>th</sup> Cir. 1998). Accordingly, prisoners have no choice but to file a grievance and exhaust such administrative remedy pursuant to 42 U.S.C. §1997e, but in this State, filing a grievance regarding their claim automatically renders it subject to Tenn. Code Ann. §41-21-806 and its abbreviated time period. The statute, therefore, unfairly discriminates against §1983 actions, since any such action will be subject to the thirty day limitation, and can reduce the one year granted to all plaintiffs, as did occur in this case.

Next, defendants argue that plaintiff cannot maintain his claims because they imply that his disciplinary convictions for creating a disturbance, disrespect, and threatening an employee were invalid, when these convictions have not been reversed or otherwise declared invalid, pursuant to *Edwards v. Balisok*, 520 U.S. 641 (1997) and *Heck v. Humphrey*, 512 U.S. 477 (1994). *Edwards* and *Heck*, however, stand for the proposition that a prisoner cannot seek relief under §1983 for violations related to the disciplinary conviction without said conviction having been reversed or invalidated. In this case, plaintiff's allegations regarding excessive force do not necessarily imply the invalidity of his disciplinary conviction, i.e., plaintiff may have been disrespectful, threatening, etc., either before, during, or after he was allegedly unlawfully assaulted by the prison guard. Moreover, plaintiff's claims that he was disciplined in retaliation for filing a grievance which does not seek to invalidate his disciplinary conviction, but merely to question the animus for defendants' pursuit of same. See *Burgess v. Moore*, 39 F.3d 216 (8<sup>th</sup> Cir. 1994). Since plaintiff's Complaint does not seek to have his disciplinary conviction expressly or impliedly declared invalid, his claims are not barred pursuant to *Edwards* and *Heck*. We find defendants' argument on this issue without merit.

Plaintiff also argues that it was improper for the Trial Court to grant defendants' Motion for Summary Judgment without giving plaintiff the right to appear and argue his position. It appears that plaintiff's motion was never acted upon by the Trial Court. However, in view of our ruling on appeal, it is unnecessary to address this issue, except to say the rule in this regard which has developed, is that a trial judge has discretion to decide whether or not to order a prisoner's appearance based upon a balancing test which considers the best interests of the prisoner and the government, as well as the "substantiality of the matter at issue." *Knight v. Knight*, 11 S.W.3d 898 (Tenn. Ct. App. 1999).

---

<sup>1</sup> This requirement does apply to allegations of excessive force. *Freeman v. Francis*, 196 F.3d 641 (6<sup>th</sup> Cir. 1999).

<sup>2</sup> This version of the statute with the mandatory exhaustion requirement has been in effect since 1996.

For all the foregoing reasons, we vacate the summary judgment in this case, and remand for further proceedings consistent with this Opinion. The cost of the appeal is assessed to the appellees. Robert Gibson, Gail Williams, Joey Texiera, and Darren Settles.

---

HERSCHEL PICKENS FRANKS, J.